



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 31160633

Date: MAY 23, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a research associate, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Petitioner satisfied the initial evidentiary requirements for this classification, he did not demonstrate, as required, that he has sustained national or international acclaim and is among that small percentage at the very top of his field. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they must provide sufficient qualifying documentation they meet at least three of the ten criteria listed at

8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and authorship of scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a postdoctoral degree in pathology in China. When he entered the United States in 2019, he conducted research at the [REDACTED] and later joined [REDACTED] as a postdoctoral fellow. Currently, the Petitioner stated he is a research associate conducting research in Dr. [REDACTED] laboratory, who is an associate professor in the department of pathology at [REDACTED]. The Petitioner explained he is a “well-established scientist with strong expertise in molecular biology, cell biology and medical research.”

A. Evidentiary Criteria

The Director concluded that the Petitioner met the initial evidentiary requirements of documenting he satisfied at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)–(x).¹ Specifically, the Director found that the Petitioner offered evidence of his participation as a judge of the work of others, his authorship of scholarly articles in the field in professional publications, and his original scientific contributions of major significance in the field. Thus, the Director determined that the Petitioner satisfied the three criteria under 8 C.F.R. § 204.5(h)(iv)–(vi).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international claim, that he is one of the small percentage at the very top of his endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if those achievements are sufficient to demonstrate their extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. While the Petitioner has offered documentation satisfying three of the ten initial evidence criteria, two of these criteria involve activities that appear to be routine among research scientists. The Petitioner’s co-authorship and first authorship of scholarly articles meets the requirements of 8 C.F.R. §

¹ The Director concluded that the evidence did not show the Petitioner had received a one-time achievement (that is, a major, internationally recognized award) discussed under 8 C.F.R. § 204.5(h)(3). On appeal, the Petitioner does not challenge this finding.

204.5(h)(3)(vi), and his peer review of other scientists' manuscripts constitutes judging the work of others under 8 C.F.R. § 204.5(h)(3)(iv). The Director also concluded that the Petitioner has made original scientific contributions of major significance in his field. This evidence reflects that he is an accomplished researcher in his field. The record, however, does not contain evidence sufficient to show that he has risen to the very top of his field and has sustained national or international acclaim.

We agree with the Director's determination that participation in the peer review process does not automatically support a conclusion that a researcher has achieved the recognition required for this classification.

As relating to his service as a manuscript reviewer, we must evaluate the significance of his experience to determine if such evidence indicates the required level of acclaim and recognition for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22.² The Petitioner provided evidence of his service as a peer reviewer for several professional journals, including the following: *Annals of Medicine*, *Journal of Leukocyte Biology*, *Open Medicine*, *BMC Bioinformatics*, *BioMed Research International*, *Frontiers in Immunology*, *Heliyon*, *Biomedicine & Pharmacotherapy*, *International Immunopharmacology*, *Frontiers in Cell and Developmental Biology*, *Gene Reports*, *Functional & Integrative Genomics*, *Discover Oncology*, *PeerJ Computer Science*, and *Frontiers in Pharmacology*. The Petitioner claims he is distinguished from other researchers since he reviewed research manuscripts for 15 important international journals. Although the Petitioner indicated these journals as "important," he did not provide sufficient documentation regarding all the journals and the actual importance of them in his field of research.

In response to the Director's notice of intent to deny, (NOID), the Petitioner submitted letters from three editors of three different journals explaining the process in selecting a peer reviewer. The editor-in-chief of [REDACTED] stated that she called on the Petitioner as a peer reviewer since he is an "expert in the field of immunology." The associate editor of the [REDACTED] [REDACTED] stated that "only scientists who have established an international reputation of excellence in the selected area of research are considered as potential reviewers." The editorial assistant for the [REDACTED] stated that the Petitioner's appointment as a reviewer is a "reflection of his exceptional qualifications, marked by outstanding research accomplishments and an expanding international reputation." The Petitioner only submitted evidence of the peer review selection process of three of the journals for which he provided peer review services. As noted, one editor indicated that the Petitioner was selected for his international reputation of excellence while the other two editors indicated his selection because he is an "expert" and he has "expanding international reputation." Without sufficient evidence that sets the Petitioner apart from other researchers who are called on to perform peer review services in his field, he has not provided sufficient context to demonstrate that the nature and scope of his peer review work is indicative of his sustained national or international acclaim or indicative of a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act.

² *See also 6 USCIS Policy Manual, supra*, at F.2 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

Likewise, publication of research does not automatically place a researcher or professor at the top of their field. Here, the Petitioner submitted his Google Scholar profile showing that he published 14 research articles (4 first authored and 10 co-authored). As authoring scholarly articles is often inherent to the work of scientists, researchers and academics, the citation history or other evidence of the influence of his articles can be an indicator to determine the recognition that his work has had on the field and whether such recognition or influence has been sustained. For example, numerous independent citations of the Petitioner's work may provide solid evidence that his work has been recognized and that other researchers have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F.3d at 1122. The Petitioner also stated that although his three most cited papers were co-authored, he also received citations for his first-author papers. The Petitioner did not provide evidence differentiating his publication rate from those of others in his field, or otherwise establish that it is reflective of one who is among the small percentage at the very top of his field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

Here, the record indicates that, as of October 2023, the Petitioner's body of published work received 960 total citations, with 893 citations since 2018. The Petitioner's most-cited articles was an article from 2017 (173 citations) and two articles from 2016 (123 and 103 citations). The evidence reveals that articles that the Petitioner authored alone have not received the same level of attention in the field as articles where he co-authored. For example, the google scholar printout notes that the Petitioner first author article that garnered the most citations was published in 2018 and it received 98 citations. The Petitioner's citations, both individually and collectively, show that his work has received some recognition in his field. However, he did not provide evidence demonstrating that the total rate of citations to his body of published work is high relative to others in the field or that the citations to his research represent attention at a level consistent with being among small percentage at the very top of his field. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2) (stating that depending on the field and the comparative data a petitioner provides, such evidence may indicate a person's high overall standing in a given field).

The Petitioner also stated that his most recent article, the final version of which was published in 2023, appeared in the *Journal of Clinical Investigation*, and that journal was ranked by Altmetric in the top 5% of all research outputs. The Petitioner submitted evidence regarding the attention score assigned by Altmetric to the Petitioner's paper published in the *Journal of Clinical Investigation*. According to the Altmetric website, it appears that these scores are calculated based on online attention derived from social media and mainstream news media.³ According to its website, the attention scores reflected in the Altmetric data provided by the Petitioner are garnered in large part by mentions in various social media platforms such as news articles, blogs, *Wikipedia*, and other social media sites. It is important to point out that while *Wikipedia* is not the sole source used for score compilation, it nevertheless is highlighted as a significant source of data, and there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited internet site.⁴ *See Lamilem Badasa v.*

³ *See* https://help.altmetric.com/support/solutions/articles/6000233311-how-is-the-altmetric-attention-score-calculated?_gl=1*1tqna7*_ga*MTI1NjM2Mjg2Mi4xNzE2MzE0NDA1*_ga_CHDNWH4YDX*MTcxNjQwNTMwMS4yLjEuMTcxNjQwNTMyOS4wLjAuMA. (last visited May 23, 2024).

⁴ Online content from *Wikipedia* is subject to the following general disclaimer, "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia; that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows

Michael Mukasey, 540 F.3d 909 (8th Cir. 2008). Here, the Petitioner does not explain or demonstrate that even very high attention in social media and mainstream news media is indicative of the subject research being of major significance to other scientists.

Therefore, while the Petitioner's citation record and the inclusion of his article in the *Journal of Clinical Investigation* may be noteworthy, he did not demonstrate that his overall publication record demonstrates the required sustained national or international acclaim for this classification or reflects that he has reached the very top of his field of endeavor. *See* section 203(b)(1)(A) of the Act.

With respect to the Petitioner's research activities, the Director observed that he had made original contributions to the field. However, the Petitioner has not demonstrated that his contributions are of major significance to the field or that such contributions resulted in the Petitioner "having achieved sustained acclaim as one of the very top of the field of endeavor." The Petitioner does not directly address this determination on appeal.

The Petitioner has shown that his work was valuable but the evidence, considered individually and collectively, does not establish that his contributions have been recognized at a level that elevates him to the top of his field or that they have resulted in his sustained national or international acclaim. In general, the letters recount the Petitioner's research and findings, indicate their publications in journals, and point to the citations of his work by others. Although they reflect the novelty of his work, they do not sufficiently articulate how his research and findings have been considered of such importance and how their impact on the field rises to the level of major significance required by this criterion.⁵

For example, a letter from Dr. [] an associate professor in the department of medicine, director of the MD-PhD program, and senior associate dean for MD-PhD education at the [] states that he is personally familiar with the Petitioner's work, and indicated that the Petitioner and "his colleagues" researched hypertension and inflammation and that their research provides "compelling evidence" of a medical link that can suggest a potential therapeutic strategy for the treatment of hypertension. Here, the author repeatedly asserts the research was performed by the Petitioner and his colleagues but does not further elaborate on how the Petitioner's achievements have been recognized at a level that places him at the very top of the field.

The additional reference letters all discuss the Petitioner's research findings and that they contributed to the medical research community. Some authors of the reference letters also indicated that they referenced his research in their own work. While the Petitioner has earned significant praise from scientists in his field, the solicited letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner's contributions in the medical field, primarily conducted while he was completing his graduate studies, have resulted

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⁵ While we discuss a sampling of letters, we have reviewed and considered each one.

in his sustained national or international acclaim and that he is more broadly recognized as being among that small percentage at the very top of his field of endeavor.

The record, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record does not indicate a degree of recognition consistent with the sustained acclaim that the statute demands. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2). Based on this finding, we need not consider the separate question of whether his entry would substantially benefit prospectively the United States.⁶

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ *See INS v. Bagambashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).